



NZCFI

The Personal Property Securities Register

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Overview

- What is a security interest?
- What do you need to do to protect it?
- Registration
- Arrangements outside PPSA
- Risk management
- Recovery on insolvency



What is a security interest?

- You have one when you have any claim over property, other than land, in order to make sure the person you are dealing with will perform a monetary obligation.
- Broadly defined. Many types of transactions are covered.
- Examples: Selling goods on credit, leasing goods, supplying goods to a retailer to sell on your behalf, giving someone rights to hold equipment e.g. under a franchise agreement.



What do you need to do to protect it?

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- “Attachment”. The documents creating the security interest must be in writing, signed or confirmed in writing by the debtor, and must adequately describe the property.
- In other words - signed terms of trade, loan agreement, lease etc.
- Title does not offer much protection.



Registration

- “Perfection”. Think “Registration of a financing statement on the PPSR”.
- Usual rule is first to register has first priority to the property in an insolvency event.
- Creditors who supplied the property, or finance to purchase the property, can obtain a PMSI and take priority over earlier registrations.



Registration (continued)

- To obtain Super Priority –
 - you must register prior to debtor taking possession, in case of inventory; and
 - within 10 days of possession in other cases.
 - PMSI holder priority to original collateral and proceeds.
- Proving PMSI priority – evidence required



Accuracy of registration

- Defects can mean that you lose priority.
- *Polymers v Interworld Plastics (In Liq)*.
 - No debtor company unique identifier.
 - No correct classification of debtor as a “company”.
 - Name misspelled.
 - Misleading and invalid.
- Penalty for error is not rejection of the registration but rather its later invalidity.



Do I really need to register?

- Bailments? – not if it's a gratuitous bailment
 - i.e. bailment only subject to PPSA when owner receives payment for the use of the goods. Similar to a lease.
- Leases?
 - Yes, except if it's for a term of less than a year (some exceptions).



Do I really need to register? (continued)

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- Liens
 - Statutory liens and common law liens have, in some cases, priority over secured creditors.
 - They sit outside the PPSA .
 - Debt usually for services related to goods held.
 - Contractual liens are security interests and subject to PPSA.



Managing Risk During Trading Relationship

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- Maintain the registration
 - Expiry after 5 years
 - There are no reminders
 - Debtor company name changes & transfers
- Industry specific statutory charges and non-PPSA priorities
 - Customs duty – *Fisk v Attorney General*
 - Liens, as above



Maximising Recovery in an Insolvency Event

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- Exercise of rights in good faith and in accordance with reasonable standards of commercial practice.
- Creditor's enforcement rights are those under the security agreement, and Part 9 PPSA.
- Subject to PPSA priority rules.
- Contracting out permitted e.g. debtor's right to receive a statement of account following sale of collateral.



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